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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,307	05/01/2006	John P. Koke	D-43689-01	6400

7590
Sealed Air Corporation
Cryovac
Law Department
PO Box 464
Duncan, SC 29334

EXAMINER

GERRITY, STEPHEN FRANCIS

ART UNIT	PAPER NUMBER
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3721

MAIL DATE	DELIVERY MODE
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05/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/540,307

Applicant(s)

KOKE ET AL.

Examiner

Stephen F. Gerrity

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 19-21, 29 and 30 is/are rejected.
- 7) ☒ Claim(s) 5-18 and 22-28 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 9/1/05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. § 119. The certified copy has been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

Information Disclosure Statement

2. Receipt is acknowledged of an Information Disclosure Statement, filed 1 September 2005, which has been placed of record in the file. An initialed, signed and dated copy of the PTO-1449 form is attached to this Office action.

Oath/Declaration

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

The declaration filed 1 May 2006 uses the phrase "... material to the examination..." which is improper.

Specification

4. The disclosure is objected to because at page 8, there is a second brief drawing description for each of figures 15 and 16, see lines 18 and 20.

Appropriate correction is required.

5. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

6. Claims 5-18 and 22-28 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 5-18 and 22-28 have not been further treated on the merits.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 2-4, 19-21, 29 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The language in claim 2, line 2, "and more to open the pack" is vague and indefinite because it is unclear to what applicant is referring, i.e. more "what".

Claim 19, line 4, "the mouth" and "each pack" both lack proper antecedent basis.

Claim 20, line 2, "the pack opener" lacks antecedent basis. The use of the parenthetical term "part(s)" renders the claim vague and indefinite.

Claims 29 and 30, the language "by a lesser number of the conveyors for smaller products and a greater number of the conveyors for larger products" is vague and

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indefinite, and not understood in terms of the claimed subject matter. The terms "lesser", "smaller", "greater" and "larger" are all relative terms which make the scope of the claim unascertainable.

These and any other informalities should be corrected so that the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-4 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Giraudi et al. (**US 3,872,644**).

The Giraudi reference discloses that the dimension of an article to be packaged is acquired, and then based on the determined dimension of the article a particular bag is selected and opened by the use of fingers (11). The bag (or pack) is opened and the article is feed into the opened bag, and subsequently the bag containing the article is fed into a vacuum chamber of a vacuum packaging machine.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giraudi et al. (**US 3,872,644**).

The Giraudi et al. reference discloses in col. 1, that alternatively a plurality of paths may be provided each leading to a respective one of a plurality of bag-filling units and the classification unit being effective to direct the articles along an appropriate path commensurate with the size of the particular article. The Giraudi et al. reference does not particular state that the number of conveyors, i.e. paths, is lesser in number for smaller articles, and greater in number from larger articles. The number of conveyors being different in number depending on the size of the articles is clearly a choice of design because the number would have been completely arbitrary to a person having ordinary skill in the art, since applicant has not disclosed that such solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the same number of conveyors be the articles large or small.

Conclusion

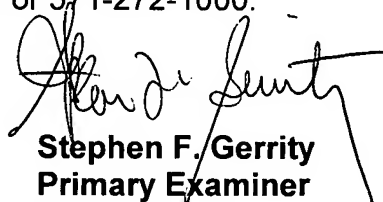
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references listed on the attached form (PTO-892) are cited to show various methods and machines for filling bags and vacuum packaging. All are cited as being of interest and to show the state of the prior art.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Gerrity whose telephone number is 571-272-4460. The examiner can normally be reached on Monday - Friday from 6:30 - 3:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Stephen F. Gerrity
Primary Examiner
Art Unit 3721

13 May 2007